

Service Date: February 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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| IN THE MATTER OF Project Telephone |) | UTILITY DIVISION |
| Company's Implementation of 1+ intraLATA |) | |
| Dialing Parity |) | DOCKET NO. D98.10.230 |
| |) | |
| |) | ORDER NO. 6149 |

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On December 4, 1998, Project Telecommunications Inc. (Project) filed its Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). Project's Plan requests approval of the procedures and process it intends to use to implement 1+ intraLATA dialing parity (also known as equal access).

2. Project filed its Plan in response to a bona fide request (BFR) it received from AT&T Communications of the Mountain States, Inc.'s. (AT&T) on October 6, 1998. AT&T's BFR requested that Project implement intraLATA equal access in all its exchanges.

3. The Commission has adopted rules for intraLATA dialing parity implementation in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). See ARM 38.5.4101 through 38.5.4120. ARM 38.5.4120 requires Project to implement intraLATA dialing parity pursuant to a Commission-approved plan.

4. ARM 38.5.4120(1) allows interested parties a reasonable opportunity to comment on a LEC's intraLATA equal access plan. On January 14, 1999, AT&T filed the only comments on Project's Plan.

5. Following a review of Project's Plan the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

6. The Commission established the intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)." ARM 38.5.4101, entitled "SCOPE AND PURPOSE OF RULES." Subsection (2) provides further indication of purpose in adopting the rules:

...The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested parties. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T's original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

7. ARM 38.5.4120(1) states that ILECs "shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116." ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC's toll dialing parity plan shall have a reasonable opportunity to do so.

8. ARM 38.5.4120 provides that Project's Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in and the manner of distribution of, the customer notification letter;
- (c) a description of Project's anticipated cost of implementation, including Project's specific implementation costs, the vehicle that Project intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Project's proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Project in its role as a local exchange provider in a competitively neutral manner following implementation.

We address the general subtopics of intraLATA equal access implementation with respect to Project's Plan below:

A. Part II. Implementation Schedule

9. Project's scheduled implementation date for all its exchanges is April 6, 1999.

Project will implement the full "2-PIC" carrier selection methodology required by ARM 38.5.4103(2). All residential, business and payphone customers will be offered intraLATA equal access via the 2-PIC method.

B. Part III. Customer Lists and Carrier Notification Procedures

10. *Carrier notification:* ARM 38.5.4120(3) requires that Project provide notice to registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. All carriers wishing to participate in presubscription must respond to Project within 30 days. Further, Project may not allow participation by unregistered telecommunications providers.

11. Carrier notification was bifurcated from Project's Plan in order for Project to meet the 120-day deadline required by ARM 38.5.4120(3). On December 15, 1998, the Commission approved Project's carrier notification language.

12. The Commission's approval of carrier notification permitted Project to notify registered carriers by means of a Commission-established electronic mailing list or "listserv" in lieu of first class mail. The Commission's "listserv" includes carriers who have registered on the Commission's website as required by Montana law and have provided e-mail addresses on the website. Project elected to use the electronic "listserv." The Commission required Project to mail its carrier notification by first class mail to registered carriers who could not be contacted electronically.

13. *Customer lists:* ARM 38.5.4105(2) requires a LEC or primary toll carrier make available to all registered carriers that intend to offer equal access a complete list of the primary toll carrier's customers by name, address and phone number within 45 days of receipt of a BFR. The Commission requires that Project make available such list, on request, to all registered carriers that intend to offer intraLATA equal access. Charges for such list shall be cost based and nondiscriminatory.

14. *PIC change requests:* Project's Plan does not state when it will begin accepting letters of authorization (LOAs) or customer requests to change an intraLATA carrier. ARM 38.5.4116(1)(e) requires LECs to accept LOAs within the 60 days prior to implementation. Project is required to begin accepting LOAs and customer requests for an intraLATA carrier selection no later than 60 days prior to implementation. In the case of multiple LOA submissions, the last dated LOA shall be processed. Project is required to accept and process

LOAs that conform to ARM 38.5.3801 through ARM 38.5.3810, the emergency slamming rules adopted by the Commission in Docket no. L.99.1.1-RUL, and §69-3-1304, MCA.

C. Part IV: Customer Notifications, Education, and Safeguards

15. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) states that a LEC's plan must describe how notification to end users will be carried out and must include the language the LEC will use in its customer notification letter and describe the manner of distribution of such letter.

16. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be "complete, clear and unbiased." It further requires local exchange carriers to promptly make any changes required by the Commission before using them. Pursuant to ARM 38.5.4104 and at least 30 days prior to its scheduled implementation, Project must provide written notification to subscribers that describes intraLATA dialing parity and explains presubscription procedures. Information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carrier, Nemont Communications, Inc. (Nemont), until the end users take action to change.

17. *Existing customer notification:* Project's Plan states that it will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures. Project attached as Exhibit A its proposed format to notify customers. Project states that it will provide customer notification via direct mail or as a "bill stuffer" prior to March 6, 1999. Project's Plan for notifying existing customers is consistent with Commission rules and its written notification contains a good explanation of intraLATA 1+ presubscription that should help its customers understand this often-confusing concept.

18. *New customer notification:* Project's Plan provides that all new customers who commence local service after the mailing to existing customers and before equal access presubscription is implemented shall be provided information from Project about their carrier selection options at the time they sign up for local service. Customers who subscribe to local service between March 5 and April 6, 1999, will be provided a copy of this written notification that was provided to existing customers.

19. These new subscribers may select both their primary interLATA and intraLATA carriers or be assigned "no-PIC" status. Project did not address waiver of PIC charges for customers who do not choose a PIC prior to new service installation. Presently, Project waives charges for interLATA PIC selections for 30 days after new service is installed and has indicated informally that it will follow this practice for intraLATA PIC selections as well. The Commission finds this to be in the public interest and requires this modification to the plan.

20. *Waiver period:* ARM 38.5.4111(1) states that "no charge shall be imposed for a customer's initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange."

21. Project's Plan states that no charge will be imposed for 90 days following customer notification. This language, coupled with the customer notification procedures outlined in ARM 38.5.4104, would effectively limit the waiver period to 60 days and is not consistent with Project's customer notification letter. Project must allow its customers to select an intraLATA carrier once without charge within 90 days following the implementation of intraLATA equal access. Subsequent changes will be assessed pursuant to ARM 38.5.4111.

22. *PIC charges:* ARM 38.5.4111 states that PIC change charges shall be “the same as those imposed for changing interLATA carriers.” Project’s Plan proposes to charge the following for PIC changes: (1) \$5.00 to change either an interLATA or intraLATA PIC, (2) \$7.50 to simultaneously change interLATA and intraLATA PICs to the same carrier, and (3) \$10.00 to simultaneously change interLATA and intraLATA PICs to two separate carriers. These charges do not comply with ARM 38.5.4111 and are not approved. Until Project demonstrates to the Commission that its PIC change costs support a higher charge, Project shall charge the applicable rates outlined in ARM 38.5.4111.

23. *Customer Safeguards:* Project’s customer notification letter implies that its customers must inform Project when they select an alternate intraLATA carrier. Project’s letter provides, “if you would like to select another long distance company to handle these [intraLATA] calls, you will need to notify PROJECT TELECOMMUNICATIONS INCORPORATED of your selection.” The Commission’s dialing parity rules do not require end users to notify their current intraLATA carrier when they select another carrier. Project’s end users may select an alternate intraLATA carrier either by contacting the new carrier by contacting Project.

24. Project’s Plan states that Project will follow Montana statutes and administrative rules with regard to “slamming” and obtaining required authorizations for PIC changes. It further provides that all customers who have an interLATA PIC freeze on their account will have that PIC freeze placed on their intraLATA service as well.

25. Project’s Plan provides that a list of all participating registered interexchange carriers who have responded during the 30-day period following Project’s carrier notice and their toll free telephone numbers will be attached to the customer notification. The notification

provides procedures for changing from the present intraLATA carrier. Project's notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change.

26. *Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires that Project's customer information and procedures used to provide new customers information about carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

27. Project's Plan states that its representatives will inform new local exchange end users of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial a carrier access code to place these calls. New and existing customers may communicate their choices of carriers directly to Project through the local business office or they may do so indirectly through their selected carriers for either interLATA or intraLATA toll.

28. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, "When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings." Subsection (1)(c) further provides that when a customer contacts a LEC's business office to change the PIC from the LEC to a competitor, "the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another)."

29. Project states that it will handle all customer-initiated contacts for PIC changes in a neutral manner. However, Project's Plan does not address how interexchange carrier's names

will be presented to the requesting end user. Further, many of the Commission's previously expressed concerns about contact handling by local exchange carriers who provide intraLATA toll service apply to Project because intraLATA toll service is provided by an affiliate, Nemont. Project and Nemont, *inter alia*, have the same business office and same directors. Therefore, the Commission imposes some requirements for these contacts.

30. Project is required to provide, in random order, the names of all carriers providing intraLATA interexchange service in its area. The random list shall be scrambled at least once per month.

31. In addition, ARM 38.5.4105(4) requires Project to provide proposed business office scripts to the Commission for review as part of its implementation plan. The rule requires that the scripts be filed so that they can be reviewed by the Commission prior to approval or modification of the Plan. Project is required by rule to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than "general service" contacts.

32. Project submitted the following script:

You are now able to choose an interexchange carrier to handle your long distance IntraLATA as well as InterLATA calls. Choosing your preferred IntraLATA carrier means that a special access code will no longer be required to have that carrier handle those types of long distance calls. There are several carriers available and if you already have a preference I can take your request now. Or, if you would prefer, I can read the list of carriers available in your area.

Project's script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

33. The Commission recognizes that a script will not be appropriate for all calls. Some contacts will require that Project's representatives adapt their conversation based on

individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

34. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Project's affiliate, Nemont, provides intraLATA toll to Project's subscribers. Therefore, reasonable LEC restrictions related to marketing on customer-initiated calls to Project's business office apply. The Commission concludes that it is reasonable to prohibit Project from initiating marketing and promotional activities for Nemont's intraLATA services on contacts for new service, transfers of service and number changes.

D. Part V: Costs Recovery

35. Project's Plan states that it will incur incremental costs to implement intraLATA dialing parity. Major cost categories cited by Project include: (1) switching upgrade to allow 2-PIC presubscription, (2) support systems, (3) customer notification, (4) office personnel training, and (5) implementation activities to migrate subscribers to their carrier of choice. All these costs are recoverable pursuant to ARM 38.5.4115.

36. ARM 38.5.4120 requires Project's Plan to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Project did not submit cost support data defining the incremental costs associated with implementing intraLATA equal access. However, Project states that it will notify the Commission if and when it seeks to recover these costs.

37. The Commission will not require Project to provide a cost analysis and is satisfied with Project's proposal. The public interest is best served by waiving the requirement for cost

information for Project. If Project incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Project is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Project's intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 18th day of February, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.